UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.527
29 May 2002

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-eighth session

SUMMARY RECORD OF THE 527th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 16 May 2002, at 3 p.m.

Chairman: Mr. BURNS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Conclusions and recommendations concerning the third periodic report of the Russian Federation (CAT/C/34/Add.15; CAT/C/XXVIII/Concl.5)

1. At the invitation of the Chairman, the members of the delegation of the Russian Federation took places at the Committee table.

2. Ms. GAER, Country Rapporteur, read out the Committee's conclusions and recommendations concerning the third periodic report of the Russian Federation (CAT/C/34/Add.15), which were contained in document CAT/C/XXVIII/Concl.5.

3. Mr. KALININ (Russian Federation) thanked the Committee for its conclusions and recommendations which would play a very significant role in the Russian Federation's ongoing legislative reforms of the penal and judiciary system. All recommendations would be made available to the departments concerned and the report which the delegation would submit on its return to Russia would also focus on areas for improvement. His delegation had appreciated the open dialogue with the Committee and was grateful for the positive comments made. All problems would be given due consideration and would, he hoped, be duly overcome.

4. The CHAIRMAN said that the Committee had appreciated the fact that the Russian Federation had sent such an eminently qualified delegation and also that it had responded in such detail to the questions which had arisen from the report. The Committee would be grateful to receive in writing at a later date any outstanding replies to the questions asked.

5. The delegation of the Russian Federation withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Draft mandate of the Rapporteur(s) on Follow-up to Conclusions and Recommendations (CAT/C/XXVIII/Misc.12)

6. The CHAIRMAN, introducing the draft decision on the subject proposed by Mr. Mavrommatis, explained that it was accompanied by a set of general modalities.

7. Mr. MAVROMMATIS said he wondered whether it was really necessary for the Committee to limit itself in the general modalities by specifying a time limit of six months. Since it was important not to have hard and fast rules, he thought the Committee's best plan might be to adopt the draft decision and leave the modalities on record to revert to, as and when it was deemed necessary.

8. Mr. EL MASRY proposed changing the first part of the fourth line of the draft decision to read "its initial, periodic or specific report".

9. Ms. GAER suggested the term "or other report" rather than "specific report".

10. Mr. RASMUSSEN said he wished to clarify that States parties that had not reported would not fall under the mandate of the Rapporteur on Follow-up under article 19. He wondered, however, whether it would be possible to expand the Rapporteur's mandate to include reports that had not been submitted.

11. The CHAIRMAN explained that the Rapporteur on Follow-up would not deal with that issue as he or she would report on the outcome of decisions included in the Committee's conclusions and recommendations.

12. The draft decision on the Mandate of the Rapporteur on Follow-up to Conclusions and Recommendations, as proposed by Mr. Mavrommatis and orally amended by Mr. El Masry and Ms. Gaer, was adopted.

Draft mandate of the Rapporteur(s) on Follow-up to Decisions on Complaints submitted under article 22

13. The CHAIRMAN read out the proposed draft decision on the mandate:

> "At its 527th meeting on 16 May 2002, the Committee decided that the Rapporteur shall have, inter alia, the following mandate:
>
> (a) To monitor compliance with the Committee's decisions inter alia by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions;
>
> (b) To recommend to the Committee appropriate action upon the responses received from States parties, upon situations of non-response and upon all letters henceforth received from complainants concerning non-implementation of the Committee's decisions;
>
> (c) To meet members of the missions of States parties to encourage compliance and to decide whether advisory services or technical assistance by the Office of the High Commissioner for Human Rights would be appropriate or desirable;
>
> (d) With the approval of the Committee, to conduct follow-up missions to States parties; and
>
> (e) To prepare periodic reports to the Committee on his/her activities."

14. He invited comments on the draft decisions.

15. Mr. MAVROMMATIS proposed that the words "members of the missions of States parties" in paragraph (c) should be replaced by "representatives of States parties".

16. Ms. GAER requested clarification of the terms of reference of the working group in the light of the new Rapporteur's follow-up mandate.

17. The CHAIRMAN said that the working group would receive files, examine their admissibility and make a recommendation to the Committee. However, it would not do follow-up work.

18. Mr. YU Mengjia said that paragraph (d) referred to "follow-up missions" whereas the Committee had previously agreed to use the word "visits".

19. Mr. EL MASRY said that the Committee had adopted two approaches in the drafting of the Rapporteurs' mandates, a succinct description of the Rapporteur's mandate in the article 19 follow-up and a detailed description of the Rapporteur's mandate in the article 22 follow-up. It was important to be consistent and use the same approach for both.

20. The CHAIRMAN said that, if the substance of the text for the article 22 follow-up secured the Committee's approval, the Secretariat could be asked to redraft it in the style of the article 19 follow-up text.

21. Mr. de ZAYAS (Office of the United Nations High Commissioner for Human Rights) said that the title of the post was somewhat long and proposed the wording "Rapporteur on Findings adopted under article 22" in view of the fact that the new rules of procedure adopted by the Committee used the term "findings".

22. The CHAIRMAN said that, if the Committee was in agreement on the substance of the mandate, the Secretariat could redraft the text.

23. It was so decided.

Draft mandate of the Rapporteur on New Complaints

24. The CHAIRMAN read out a draft decision on the mandate of the Rapporteur on New Complaints.

25. Mr. MARIÑO MENÉNDEZ asked whether the Rapporteur on New Complaints, acting alone, should be empowered to withdraw interim measures of protection. Given that a person's life could be at stake, it would surely be more prudent to authorize the Rapporteur to act in conjunction with the plenary or the Bureau or, at the very least, in consultation with the Chairman. While not wishing to cast doubts on the sound judgement of the Rapporteur, he wished to make sure that appropriate safeguards were in place.

26. Mr. GONZÁLEZ POBLETE said that the most important task was to establish uniform criteria and uniform jurisprudence. To that end the Rapporteur would report to the Committee on his or her decisions and the Committee would indicate what corrective action needed to be taken in the future, if required.

27. The CHAIRMAN said he took it that the Committee wished to adopt the draft decision on the mandate of the Rapporteur on New Complaints, subject to minor drafting changes by the Secretariat.

28. It was so decided.

Appointment of the Rapporteur on New Complaints

29. Mr. RASMUSSEN nominated Mr. Mavrommatis as Rapporteur on New Complaints and Interim Measures.

30. Mr. YAKOVLEV seconded the nomination.

31. Mr. Mavrommatis was elected Rapporteur on New Complaints and Interim Measures by acclamation.

Assistance to non-reporting States parties

32. Mr. RASMUSSEN said that the Committee needed to discuss ways to help non-reporting States parties to fulfil their reporting obligations by, for example, using the technical assistance available from the Office of the High Commissioner for Human Rights (OHCHR) or the good offices of countries with a solid reporting record.

33. The CHAIRMAN said that the Committee should establish a small working group to explore how best to deal with the reporting backlog. The working group would submit its recommendations to the Committee at the following session.

34. Mr. MAVROMMATIS said that the Chairman ought to be involved in the efforts of the working group so as to lend it greater authority.

35. The CHAIRMAN said he took it that the Committee wished to proceed as suggested.

36. It was so decided.

Facilities for informal meetings with non-governmental organizations

37. Mr. RASMUSSEN said that better facilities, including interpretation, should be made available at the informal meetings between members of the Committee and the representatives of NGOs.

38. Mr. MARIÑO MENÉNDEZ proposed that informal meetings be organized at each session between members of the Committee and the representatives of States parties, along the same lines as the meetings with the NGO representatives.

39. The CHAIRMAN said that the Secretariat would examine the practice of other treaty bodies and see what could be done to accommodate the concerns raised and proposals made.

Letter from Indonesia (CAT/C/XXVIII/Misc.1)

40. Ms. GAER, speaking as Country Rapporteur for Indonesia, drew attention to a letter addressed to the Chairman from the Government of Indonesia which had been circulated to all the members of the Committee. The letter brought new information to the Committee's attention but contained nothing which in any way affected or contradicted its conclusions, and she wondered how the Committee should deal with it. In the letter, the Indonesian Government requested that the substance of its clarifications should be reflected in a future Committee document relevant to the issues in question and she suggested, accordingly, that the letter be issued as an official document and posted on the Convention's web site. The letter's symbol could then be cited in the Committee's annual report and that would serve the purpose of giving it a status without entering into a discussion of its content. Unlike the Commission on Human Rights, the treaty bodies had no practice of incorporating remarks by Governments in their annual reports.

41. The CHAIRMAN said that his own practice in such cases was to send an acknowledgement of receipt to the State party and that usually sufficed. In a previous case, where a State party had sent a substantial letter following consideration of its report, the Committee had decided, as the letter contained strong criticism of the conclusions, to include it in its annual report. The Indonesian letter, however, contained additional information and no complaints and he agreed that it should be sufficient to issue it under a symbol and to cite that symbol in the annual report.

42. Mr. EL MASRY said that, while agreeing with the suggestion, he noted that the letter did contain one criticism: the State party reiterated that significant legal reforms were under way to improve the protection of victims and witnesses and regretted the Committee's failure to take those reforms into account. Accordingly, he suggested that, in addition to issuing and citing the letter, the Chairman should also reply to the Government of Indonesia, thanking it for its additional information and noting the legal and administrative reforms that were under way. Two paragraphs could then be added to the annual report, mentioning the receipt of the letter and the Committee's response.

43. Mr. MAVROMMATIS said that Indonesia, a country with a huge population, had made significant efforts in recent years to improve its human rights situation and the letter could be seen as a prelude to its follow-up efforts. In view of the need to take account of the situation of countries moving from an authoritarian regime to genuine democracy, he suggested that the Committee could acknowledge the letter and encourage the State party to continue its efforts, assuring it that it would have ample opportunity to convey the additional information during its next reporting exercise.

44. The CHAIRMAN enquired whether the reference in the annual report to the letter should mention the legal reforms designed to increase protection for witnesses and victims.

45. Mr. YU Mengjia, noting some further criticism in the letter regarding the Committee's doubts about the impartiality and independence of the Indonesian National Commission on Human Rights (Komnas HAM), said that it was inappropriate for the Committee to enter into the merits of the complaints and that it should confine itself to a general response, taking note of the letter and expressing appreciation for the information it contained.

46. Ms. GAER said, with regard to the legal reforms for the protection of witnesses and victims, that the measures mentioned in the letter related only to the human rights courts and not to the regular courts and therefore did not fully allay the Committee's concerns. Quoting other comments in the letter, she demonstrated that they did not in any way affect the Committee's conclusions on Indonesia, which had been very precise. It was unnecessary, therefore, to refer to the substance of the letter, since that would necessitate a rebuttal, and the Committee should merely issue the letter as a document and cite its symbol in the report. The annual report was not intended to give a full picture of the Committee's work and, if the Committee were to decide to include summaries of letters and other materials, it would need to give a fuller picture of its review procedures as well.

47. Mr. EL MASRY said he agreed that the Committee should not go into the specific details of the letter, either in its reply or in the annual report. Accordingly, he proposed that, in his reply to the Government of Indonesia, the Chairman should state that the Committee had looked into its letter on follow-up to the conclusions and recommendations on its initial report and thanked the State party for the additional information submitted and for the measures adopted, including the significant number of legal and institutional reforms currently under way.

48. Mr. YAKOVLEV said he agreed with the formulation proposed by Mr. El Masry, which struck the necessary balance between a polite acknowledgement and a discussion of the substance of the letter. He also wondered whether, when letters cast aspersions on the Committee's procedures, it might be appropriate for the Chairman to write to the State party, thanking it for its letter and putting it right on the issue of the Committee's procedures.

49. The CHAIRMAN said that it was his practice, when receiving criticism in such letters, never to respond to the criticism, since any response would start a process that was unlikely to have a satisfactory outcome.

The meeting rose at 5.05 p.m.